IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.683 of 1996
and
C.M.P.No.3372 of 2007

Syndicate Bank by its
Manager
Salem – 2. ... Appellant

Vs.

S.R.Subramaniam ..... Respondent

Appeal filed against the Judgment and Decree, dated 29.03.1993 made in O.S.No.272 of 1987 on the file of the Additional Subordinate Judge, Salem.

For Appellant : Mr.S.Ramachandran for
Mr.K.Chandrasekaran

For Respondent : Mr.R.Subramanian

J U D G M E N T

This appeal has been preferred against the Judgment and Decree dated 29.03.1993 made in O.S.No.272 of 1987 on the file of the Additional Subordinate Judge, Salem.

2. The appellant herein was the plaintiff in the suit before the trial Court and the suit was filed seeking a decree based on the loan obtained by the respondent/defendant on 12.09.1974 by way of executing a promissory note, marked as Ex.A1.

3. In this appeal, it is not in dispute that the respondent had borrowed a sum of Rs.5,500/- and executed a promissory note Ex.A1 on 12.9.1974. Ex.A2 is the document of security for the loan obtained by the respondent, whereby the respondent acknowledged the hypothecation of goods in favour of the appellant on 12.9.1974. The application for advance against merchandise transaction, executed by the respondent for the said debt on 12.9.1974 has been marked as Ex.A3. As per Ex.A.6, the said debt was acknowledged by way of acknowledgment of debt to an extent of Rs.9,706.75/-. As per Ex.A.7, the respondent had

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admitted his liability to the appellant for Rs.15,780.90/- as on 10.7.1980. The trial Court has given its finding that the acknowledgment of liability under Ex.A7 has not been disputed by the respondent and as such the same has been established by P.W.3 as a genuine document. Even in this appeal, the validity of Ex.A.7 has not been disputed.

4. Learned counsel for the respondent contended that Exs.A8 and A9 said to have been filed as acknowledgment of debts on 01.07.1983 and 30.06.1986 respectively have not been executed by the respondent herein. According to the respondent, he had only signed in the blank formats for some other loan, but that has been misused by the appellant bank and marked as documents in this suit. It is seen that the trial Court has framed the following issues:

(1) Whether the statement of account produced by the appellant plaintiff is in correct?

(2) Whether the letters of acknowledgment of liability, dated 19.7.1977, 10.7.1980, 01.7.1983 and 30.6.1986 are genuine?

(3) Whether the plaintiff is entitled to a decree as prayed for?

(4) What relief the plaintiff is entitled to?

5. In the finding at paragraph No.10 of the impugned judgment, the trial Court has decided the answer for issue No.1 against the plaintiff and also has stated that the issue No.2 is partly allowed in favour of the plaintiff. For the other two issues held that the appellant / plaintiff is not entitled to get any decree as prayed for. Accordingly, the suit has been dismissed with cost by the trial Court.

6. As contended by both the counsel, the appeal is mainly based on the question of validity of the documents, Exs.A8 and A.9, letters of acknowledgment of debt. It has been admitted that the respondent had obtained the loan of Rs.5,500/- on 12.9.1974 from the appellant bank, as stated by the appellant herein. As per the endorsement, Ex.A.6, he has also admitted the liability on 19.07.1977 for a sum of Rs.9,706.75/-. As per Ex.A.7, dated 10.7.1980, the respondent has acknowledged his liability to the extent of Rs.15780.90/-, however, he is disputing Ex.A.8 and Ex.A.9. It is seen that Exs.A8 and A9 are also similar documents, in printed forms relating to 01.07.1983 and 30.06.1986 respectively and the details have been filled in by ink. The respondent, D.W.1 has not denied his signature and the seal, which are available in Exs. A8 and A9. Ex.A.8 is an acknowledgment of debt, dated 01.7.1983 and Ex.A9 dated 30.6.1986. Both the acknowledgements of debt are well within the period of limitation and if they are genuine documents, they would save the limitation of the pro-note, Ex.A.1.

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7. However, the trial Court has rejected the letter of acknowledgment of liability Ex.A.9, dated 30.06.1986, since the amount stated therein is only Rs. 21,482.55, less than the amount of Rs.24,120.75/- stated in Ex.A.8, dated 01.07.1983. It is seen that there is no correction or alteration is available in both the documents. Therefore, the only vital question available for consideration in the suit and the appeal is whether Ex.A.9, acknowledgement of debt, dated 30.06.1986 is not valid, as it contains a lesser amount than in Ex.A.8. It is not in dispute that as per Ex.A.9, the liability is stated to the extent of Rs.21,482.55/-. As there is no subsequent payment by the respondent, the amount could not have been reduced subsequently, and on that ground, the trial Court has held that the said documents could not be a genuine document.

8. The learned counsel for appellant contended that it is only a clerical error whereby, the balance amount has not been correctly stated in Ex.A.9, however, which would not vitiate the case of the appellant and create any doubt with regard to the genuineness of the document. It is not in dispute that Ex.A.7, dated 10.7.1980 has been admitted as genuine document executed by the respondent. Exs.A8 and Ex.A9 are also in the same format containing the signature of the respondent with the seal of his proprietary concern.

9. The defence raised by the respondent is that he had signed in blank formats of acknowledgment of debt, for some other loan obtained by him, which were misused by the appellant for the suit transaction. Since the respondent has admitted his signature and the seal of his proprietary concern, available in the acknowledgment of debt, the burden is upon to him to establish that he had signed only in blank formats for some other debts obtained by him in the Bank. In Exs.A.8 and A.9 also the loan account number has been stated at the appropriate place available for Loan account Number with other details as that of Ex.A.7. Therefore, merely because the balance amount payable had been stated as Rs.21,482.55/- in the acknowledgment of debt dated 30.06.1986, lesser than in Ex.A.8, the earlier document, the same cannot be construed as a fabricated document created by the appellant bank for the purpose of saving the limitation.

10. In this case, it has been clearly admitted by the respondent that on 12.09.1974, he obtained a sum of Rs.5,500/- as loan from the appellant and executed Ex.A.1, promissory note. Similarly, as per endorsement, Ex.A.6 available at the back of the promissory note, he acknowledged the liability to an extent of Rs.9706.75/- on 19.07.1977. As per Ex.A.7, admittedly, the respondent has acknowledged the debt to an extent of Rs.15,780.90/- on 10.07.1980. In the subsequent document, Ex.A.8, the liability to an extent of Rs.24,120.75/- has been

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stated. The contention of the respondent that he had affixed his seal and also signed in the blank formats of Ex.A.8 and Ex.A.9, for the purpose of acknowledging some other loan obtained by the bank cannot be accepted as a legal defence. Being the proprietor of his sole trading concern, the respondent could have signed only in the filled up format. As the said document contains all the details and also the loan account number and having admitted the signature available on the revenue stamp, it is not open to the respondent to dispute the document, saying that he had signed only in the blank format.

11. As contended by the learned counsel for the appellant, having admitted the signatures in the acknowledgements of debt, the defence that he had affixed his signature only in the blank formats cannot be accepted, since the burden is upon the respondent to establish that he had signed only in the blank format. The respondent has not even stated for which loan amount obtained from the bank, he had handed over the signed letter of acknowledgment of debt. Even if it is assumed for the sake of argument that he had signed Ex.A.8, when it was a blank format, it could be legally presumed that he had authorized the appellant bank to fill it up. Therefore, the defence raised by the respondent that he had signed in Exs.A.8 and A.9, acknowledgments of debt is not legally sustainable. Merely because in the acknowledgment of debt, dated 01.07.1983 the amount of liability is stated as Rs.24,120.75/- and in the subsequent document, Ex.A.9, a lesser amount has been stated, it could not be presumed that the said document has been fabricated by the appellant bank for the purpose of saving period of the limitation.

12. As contended by the learned counsel for the appellant, the amount stated in Ex.A.9 would be construed only as a clerical error in calculation. This Court is of the view that the court below, without considering the entire evidence available on record, has erroneously held that Ex.A.9 is a fabricated document, merely on the ground that the amount stated in the subsequent acknowledgment of liability is lesser than the amount specified in the earlier acknowledgment of debt. Therefore, this court is of the considered view that the aforesaid clerical error in mentioning the balance amount in one acknowledgment of debt would not vitiate the entire case based on various documents.

13. The short point for consideration is whether there was continuous acknowledgment of debt to maintain the claim of the appellant ? In the instant case, it has been admitted that the respondent had borrowed a sum of Rs.5,500/- from the appellant bank, as stated in the plaint. Subsequently, by Exs.A.6 and A.7, the respondent has admittedly extended his liability by

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specifying the loan account number and the amount due. As per Ex.A.8, acknowledgment of debt, dated 01.07.1983, it has been extended before the expiry of the time limit, similarly, within a period of three years, from the date of Ex.A.8, Ex.A.9 has been executed on30.06.1986 and subsequently, within the time limit, the suit has been filed. Therefore, merely on the ground of the clerical error, in stating a lesser amount in Ex.A.9, it would neither make the document a fabricated one nor make it invalid. The trial court, without considering these aspects in the proper and legal perspective, has erroneously dismissed the suit and hence, I am of the view that the appeal has to be allowed.

14. In the plaint, the appellant has claimed interest at 16.5% per annum. As per Ex.A.1, pronote, interest has to be calculated at 6% per annum, over and above the Reserve Bank of India rate of interest with the minimum of 15% per annum (compounded quarterly) for the value received. The appellant / plaintiff has not produced any supporting documents to show the Reserve Bank rate of interest to justify the claim of interest at 16.5%. Therefore, as per Ex.A.1, pronote, the appellant can claim interest only at 15% (compound interest) and not 16.5%, as claimed in the plaint.

15. In this appeal, the respondent by way of filing C.M.P.No.3372 of 2007, has produced the Xerox copy of the evidence given by one Krishnan, who was the Branch Manager in the appellant bank during 1987, similarly, a letter dated 30.09.1980, however, they are not relevant to decide the appeal herein, since the case is based on contractual rate of interest and there is no legal defence to reduce the said contractual rate of interest. Hence, C.M.P.No.3372 of 2007 filed under Order 41 Rule 27 CPC has been dismissed.

16. In the result, the appeal is allowed and the impugned Judgment and Decree passed by the court below are set aside. Consequently, connected C.M.P.No.3372 of 2007 is dismissed. The suit is decreed for the principal sum of Rs.5,500/- to be paid with contractual rate of interest at 15% (Compound Interest quarterly) from 12.09.1974 till the date of realization with proportionate costs in the suit. In the appeal, no order as to costs.

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To

1.The Additional Subordinate Judge, Salem.

2.The Section Officer, V.R.Section, High Court, Madras.

one cc to Mr.K.Chandrasekaran, advocate SR.No.74805

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